

REMARKS

Claims 1-37 are pending in this application. In the Office Action¹ mailed February 8, 2006, the Examiner rejected claims 17-26 under 35 U.S.C. § 101 as being directed to non-statutory subject matter; rejected claims 27, 28, 32, and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,401,128 to Stai et al. ("Stai") in view of U.S. Patent Publication No. 2002/0013848 A1 by Rene Salle ("Salle"); and rejected claims 29-31 and 34-36 under 35 U.S.C. § 103(a) as being unpatentable over Stai in view of Salle, and further in view of U.S. Patent No. 6,662,198² to Satyanarayanan et al. ("Satyanarayanan").

Applicant hereby amends independent claims 17 and 22. Applicant respectfully traverses the Examiner's rejections.

I. Rejection of claims 17-26 under 35 U.S.C. § 101

Applicant respectfully traverses the rejection of claims 17-26 under 35 U.S.C. § 101. The Examiner alleges: "The claimed subject matter 'computer readable medium' is directed toward a software program per se." Office Action at 2. The Examiner appears to assert that because Applicant's specification at p. 20, lines 1-4 discusses computer-readable media, carrier waves, and optical or digital signals, the specification discloses that carrier waves, optical signals, and digital signals are a type of computer-readable medium. Id.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

² The Office Action indicates that the Satyanarayanan patent is U.S. Patent No. 6,662,192. Office Action at 6. This appears to be a typographical error, with the correct patent number being U.S. Patent No. 6,662,198. Should the Examiner maintain the rejection in view of Satyanarayanan, Applicant respectfully requests confirmation of the correct U.S. Patent number.

The section of the text relied upon by the Examiner discloses:

Although aspects of the present invention are described as being stored in memory, one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer-readable media, such as secondary storage devices, like hard disks, floppy disks, or CD-ROM; a carrier wave, optical signal or digital signal from a network, such as the Internet; or other forms of RAM or ROM either currently known or later developed.

Applicant's specification at p. 19, line 22 through p. 20, line 4.

The Examiner mistakenly believes that this text provides for “a carrier wave, optical signal or digital signal from a network” as an example of a computer-readable medium. However, the Applicant points out the semicolon that separates “computer-readable media, such as secondary storage devices, like hard disks, floppy disks, or CD-ROM” from “a carrier wave, optical signal or digital signal from a network.” This semicolon shows that carrier waves, optical signals, or digital signals from a network are an alternative to computer-readable media, not an example thereof. Accordingly, the term “computer-readable medium” in the claims does not include such waves and signals.

To further clarify this distinction, Applicant has amended independent claims 17 and 22 to recite “a tangible computer readable storage medium comprising instructions which, when executed by a processor, perform a method” (emphasis added). In view of the foregoing remarks and amendment, Applicant respectfully requests that the Examiner withdraw the rejection of claims 17-26 under 35 U.S.C. § 101.

II. Rejection of claims 27, 28, 32, and 33 under 35 U.S.C. § 103(a)

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 27, 28, 32, and 33 because a *prima facie* case of obviousness has not been established with respect to these claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142, 8th Ed., Rev. 2 (May 2004), p. 2100-128.

A *prima facie* case of obviousness has not been established because, among other things, neither Stai nor Salle, taken individually or in combination, teaches or suggests each and every element of Applicant's claims.

Independent claim 27 recites a combination including: "means for receiving a non-tunneled packet from a source node in the first private network; [and] means for determining whether the packet is destined for the second private network" (emphasis added). The Examiner alleges that Stai discloses the claimed first private network and second private network with nodes 110A-110E in private loop 108. However, Stai only discloses a single private loop 108 including a plurality of nodes, not the claimed "first private network" and "second private network." Moreover, Stai discloses: "a public device 106A may send frames to and receive frames from private device 110E."

Communication between a public device and a private device, as taught by Stai, does not constitute a teaching or suggestion of "means for receiving a non-tunneled packet

from a source node in the first private network; [and] means for determining whether the packet is destined for the second private network,” as recited by claim 27 (emphasis added). Salle fails to cure these deficiencies of Stai, nor does the Examiner rely on Salle for such teachings.

Furthermore, the Examiner concedes that Stai does not teach or suggest “acquiring a channel key associated with a channel based on the determination.” Office Action at 5. The Examiner relies on Salle to allegedly cure this deficiency. Id. Salle, however, does not constitute prior art and therefore cannot be used to cure this deficiency of Stai. Applicant’s filing date is April 23, 2001. Salle was filed on June 8, 2001, after Applicant’s filing date. Although Salle claims priority to a foreign application dated June 9, 2000, M.P.E.P § 2136.03 instructs: “the foreign priority date of the reference under 35 U.S.C. 119 (a)-(d) and (f), and 365(a) cannot be used to antedate the application filing date.”

Because Stai fails to teach or suggest each and every element recited by claim 27 and because Salle fails to cure these deficiencies and does not constitute prior art, no prima facie case of obviousness has been established with respect to independent claim 27. Claim 28 depends from claim 27 and therefore includes all of the elements recited therein. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Stai in view of Salle.

Independent claim 32, although of different scope, recites elements similar to those recited by claim 27. Accordingly, for at least the reasons discussed above with respect to claim 27, no prima facie case of obviousness has been established with

respect to independent claim 32 and dependent claim 33. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Stai in view of Salle.

III. Rejection of claims 29-31 and 34-36 under 35 U.S.C. § 103(a)

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 29-31 and 34-36 because a prima facie case of obviousness has not been established with respect to these claims. A prima facie case of obviousness has not been established because, among other things, none of Stai, Salle, and Satyanarayanan, taken individually or in combination, teach or suggest each and every element of Applicants' claims.

Claims 29-31 and 34-36 depend from independent claims 27 and 32, respectively, and therefore include all of the elements recited therein. Satyanarayanan fails to cure the deficiencies of Stai and Salle discussed above, nor does the Examiner rely on Satyanarayanan for such teachings.

Moreover, Satyanarayanan does not constitute prior art. As noted above, Applicant's filing date is April 23, 2001. Satyanarayanan was filed on August 30, 2001, after Applicant's filing date. Accordingly, Satyanarayanan cannot be relied on by the Examiner to reject Applicant's claims.

Accordingly, for at least the reasons discussed above with respect to independent claims 27 and 32 and because Satyanarayanan does not constitute prior art, no prima facie case of obviousness has been established with respect to dependent claims 29-31 and 34-36. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 29-31 and 34-36 under 35 U.S.C.

§ 103(a) as being unpatentable over Stai in view of Salle, and further in view of Satyanarayanan.

IV. Conclusion

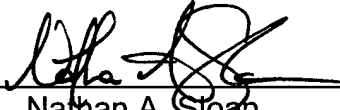
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 25, 2006

By: 
Nathan A. Sloan
Reg. No. 56,249